

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the
Commission's Own Motion to Establish
Consumer Rights and Consumer Protection Rules
Applicable to All Telecommunications Utilities.

Rulemaking 00-02-004
(Filed February 3, 2000)

**ADMINISTRATIVE LAW JUDGE'S RULING
ON REQUEST FOR INTERVENOR COMPENSATION**

This ruling allows Wireless Consumers Alliance (WCA) to revise and resubmit its Request for Award of Compensation in this proceeding, and other parties to file responses within 30 days thereafter.

The intervenor compensation program set forth in Public Utilities Code Section 1801 *et seq.*¹ allows public utility customers to receive compensation for their participation in Commission proceedings. To receive an award, a customer must make a substantial contribution to the adoption of the Commission's order or decision and demonstrate that participation without an award would impose a significant financial hardship.²

WCA filed a timely notice of intent to claim compensation which met the applicable requirements under Public Utilities Code Section 1804(a). The assigned Administrative Law Judge's (ALJ) October 10, 2000 ruling found that

¹ All references are to the Public Utilities Code.

² Section 1803.

WCA had met the definition of customer set forth in Section 1802(b), and that its participation in this proceeding without an award of fees or costs would impose a significant financial hardship, and thus that it was eligible for an award of compensation in this proceeding. As that ruling noted, a finding of eligibility to claim compensation in no way assures eligible participants will subsequently receive awards. The determination of what compensation, if any, eligible participants should be granted comes only when they have filed their requests pursuant to Section 1804(c) after the issuance of a final order in the proceeding. The intervenor's request for compensation must demonstrate that its presentation made a "substantial contribution" to the proceeding through the adoption, in whole or in part, of the intervenor's contention or recommendations by a Commission order or decision.³ Under Section 1802(c), "The request shall include at a minimum a detailed description of services and expenditures and a description of the customer's substantial contribution to the hearing or proceeding."

WCA filed a timely request for award of compensation on August 6, 2004, but that request appears insufficient to demonstrate that its presentation made a substantial contribution to the proceeding. WCA's narrative was, in fact, limited to very brief statements that it had been found eligible; that it has knowledge and experience in dealing with wireless systems and applicable rules, regulations and decisions and special insight into consumer problems; and that its efforts were limited to its areas of special expertise and did not duplicate those of other

³ Sections 1802(i) and 1803(a).

parties. It included a justification for attorney fees and other costs that also appears inadequate for the purpose.

In evaluating whether a customer made a substantial contribution to a proceeding the Commission looks at several things. First, did the ALJ or Commission adopt one or more of the factual or legal contentions, or specific policy or procedural recommendations put forward by the customer? Second, if the customer's contentions or recommendations paralleled those of another party, did the customer's participation materially supplement, complement, or contribute to the presentation of the other party or to the development of a fuller record that assisted the Commission in making its decision?⁴ Assessment of whether the customer made a substantial contribution requires the Commission exercise judgment.

In assessing whether the customer meets this standard, the Commission typically reviews the record, composed in part of pleadings of the customer and, in litigated matters, the hearing transcripts, and compares it to the findings, conclusions, and orders in the decision to which the customer asserts it contributed. It is then a matter of judgment as to whether the customer's presentation substantially assisted the Commission.⁵

Even where the Commission does not adopt any of the customer's recommendations, compensation may be awarded if, in the judgment of the Commission, the customer's participation substantially contributed to the decision or order.

⁴ Sections 1802(i) and 1802.5.

⁵ Decision (D.) 98-04-059, 79 CPUC2d, 628 at 653.

In this case, WCA has not attempted to explain (and/or provide examples of) what recommendations it put forward that constituted its contribution, how they may have contributed, whether they were adopted, or how they may have related to those of other parties. Lacking such a showing, the Commission will be unable to analyze whether there were any such specific recommendations, whether they resulted in a substantial contribution in the proceeding, and thus whether they are compensable under the statutes.

Likewise, WCA's appended statement of and justification for attorney fees and other costs provides little to evaluate their reasonableness. There is no demonstration that WCA's participation was productive ⁶ and bore a reasonable relationship to the benefits realized. There is no description of its attorney's qualifications or justification for his rates, or showing or claim that they are consistent with our past treatment of attorney fees for comparable work. There is only the most tenuous association of time charged with positions adopted. Also, WCA has not appeared to follow our guidelines for applying reduced hourly rates to time devoted to travel and preparation of its request for compensation.

It is understandable that a party having limited or no prior experience in claiming intervenor compensation would find submitting a request for compensation to be challenging. The Commission values the input of customers who participate as intervenors and would not want to dismiss their claims lightly. In this case, WCA should be granted an additional opportunity to perfect

⁶ See D.98-04-059.

its filing if it wishes to do so. Other parties should then also have time additional time to respond.

It would be beyond the scope of an ALJ's ruling to set forth a detailed template and citations for what a complete request for compensation must include, and this ruling does not attempt to do so. Should WCA decide to revise and resubmit its request, it would do well to review the statutes and the Commission's interpretive decisions. The Commission also publishes an "Intervenor Compensation Program Guide" that explains the program and does provide guidance and templates intervenors may use. Copies are available on request from the Commission's Public Advisor, or can be viewed or downloaded from the Commission's Web site, linked from <http://www.cpuc.ca.gov/static/aboutcpuc/divisions/csid/public+advisor/index.htm>.

IT IS RULED that:

1. Wireless Consumers Alliance may file a revised request for award of compensation in this proceeding not later than September 7, 2004. Within 30 days after service of any such revised request, the commission staff and any other party may file a response.
2. If no such revised request is filed, the Wireless Consumers Alliance request for award of compensation filed August 6, 2004, and any timely filed party responses thereto, will be addressed by the Commission on their merits.

Dated August 25, 2004, at San Francisco, California.

James C. McVicar
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling on Request for Intervenor Compensation on all parties of record in this proceeding or their attorneys of record.

Dated August 25, 2004, at San Francisco, California.

Janet V. Alviar

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.